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PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number (Optional)
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name _____Application Number
09/823,705Filed
March 30, 2001First Named Inventor
David M. BerezowskiArt Unit
2623Examiner
Annan Q. Shang

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

- ☒ attorney or agent of record.

Registration number 54,026

- ☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Michael J. Chasan

Typed or printed name

212-596-9000

Telephone number

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- ☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicants : David M. Berezowski et al.
Application No. : 09/823,705 Confirmation No. : 7437
Filed : March 30, 2001
For : Systems and Methods for Improved Audience Measuring
Art Unit : 2623
Examiner : Annan Q. Shang

New York, NY 10036
September 20, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Pursuant to 1296 Off. Gaz. 2 (July 12, 2005), applicants request review of the rejection of claims 1-6, 8-11, 13-46, 50-56, 58, 60-85, 87-90, 92-125, 129-135, 137, 139-164, 166-169, 171-204, 208-214, 216, and 218-237 in the above-identified application. No amendments are being submitted with this Request. This Request is being filed with a Notice of Appeal.

ARGUMENTS

I. Introduction

Claims 1-6, 8-11, 13-46, 50-56, 58, 60-85, 87-90, 92-125, 129-135, 137, 139-164, 166-169, 171-204, 208-214, 216, and 218-237 are pending in this application. Claims 1-6, 9-11, 13-46, 50-56, 60-85, 88-90, 92-135, 139-164, 167-169, 171-204, 208-214, and 218-217 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Maissel et al. U.S. Patent 6,637,029 (hereinafter "Maissel"). Claims 8, 58, 87, 137, 166, and 216 have been rejected under

35 U.S.C. § 103(a) as being obvious over Maissel in view of Hendricks et al. U.S. Patent 6,539,548 (hereinafter "Hendricks"). Applicants respectfully traverse the rejections.

II. Applicants' Reply to the 35 U.S.C. § 102(e) Rejections

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Appellants respectfully submit that Maissel does not show each and every element of appellants' claims.

1. Independent Claims 1, 80, and 159

Applicants' independent claims 1, 80, and 159 are directed to a method and systems for measuring audience size information based on playbacks of a recorded program. Indications of playbacks of the recorded program are received from a plurality of audience members. In response to receiving these indications, audience size information is updated and this updated information is then provided to at least one user within an interactive television application.

The Examiner maintains that Maissel provides audience information for recorded programs. *See* Office Action, page 3. Applicants' respectfully disagree. Maissel defines the term "audience" as referring to "the sum total audience viewing all programs at a particular time, or to the total audience of viewers who are capable of receiving programs at a particular time." *See* Maissel, col. 19, lines 23-27. Thus, Maissel's definition of audience does not include an audience that is watching a program stored after broadcast – e.g. a recorded program. As a result, Maissel's real-time information, or updated audience information, is limited to programs currently being broadcast. *See* Maissel, col. 19, lines 27-30. This real-time information does not account for applicants' improvement of updating audience size information based on playbacks of a recorded program. Accordingly, Maissel does not provide audience information for recorded programs.

Further, applicants' independent claims 1, 80, and 159 require "updating audience size information for [a] recorded program" in response to receiving "indications of playbacks of the recorded program from a plurality of audience members." In contrast, Maissel merely refers to a television system which provides an "indication of a proportion of an audience currently

viewing a program," as well as a proportion of an audience currently viewing a program "not being viewed by a viewer." See *Maissel*, col. 5, line 51 through col. 6, line 19. In other words, Maissel's television system provides information about what proportion of an audience is watching currently broadcast programming. The Examiner's position in this rejection appears to be that Maissel's indication of a proportion of an audience currently viewing a program that is not currently being viewed by the viewer is the same thing as applicants' updating audience size information for a recorded program based on indications of playbacks of the recorded program. See Office Action, pages 3 and 5 referencing col. 19, lines 1-15 of Maissel. However, Maissel's programs that are "not being viewed by a viewer" are not the same as the recorded programs specified by applicants' claims, supported in applicants' specification, and widely understood by those skilled in the art.

In particular, applicants' specification as well as common sense clearly tell us that recorded programs are programs that have been stored after their broadcast. See specification, page 2, lines 13-21. Nowhere does Maissel show that its programs "not being viewed by a viewer" are programs that have been stored after their broadcast. Thus, the Examiner's contention that indications of playbacks of a recorded program is equivalent to indications of the programs, or content, not currently being viewed by the viewer is overbroad and unreasonable. Because Maissel does not show indications of playbacks of recorded programs, Maissel does not show updating audience size information for recorded programs. Instead, Maissel provides "real-time information" on what proportion of an audience is watching currently broadcast programming. For these reasons alone, applicants submit that independent claims 1, 80, and 159 are patentable over Maissel.

For at least the foregoing reasons, applicants submit that independent claims 1, 80, and 159 are patentable over Maissel. Applicants respectfully request, therefore, that the rejection of these claims under 35 U.S.C. § 102(e) be withdrawn.

B. Independent Claims 29, 108, and 187

Applicants' independent claims 29, 108, and 187 are directed toward a method and systems for providing audience size information with program listings in an interactive television application. Indications that a user wishes to access one or more program listings are received from a user. Audience size information for a program corresponding to at least one of

the program listings is calculated. The calculating is based on a graded approach of assigning a predetermined quantity of points to each of a plurality of actions performed by a plurality of audience members. For example, a predetermined quantity of points may be assigned to an audience member playing, pausing, rewinding and fast-forwarding a recorded program. See specification, page 39, lines 3-14. Program listings that include audience size information are provided in response to the indication from the user.

Each of applicants' independent claims recites calculating audience size information by "assigning a predetermined quantity of points to each of a plurality of actions performed by a plurality of audience members." In the Office Action, the Examiner contends that Maissel's "rule-based abstracted method to generate various on-screen alerts" shows this element of applicants' claims. See Office Action, page 3. Maissel maintains preference profiles, which are collections of information that describe users' viewing habits. An intelligent agent applies rules to this information to generate on-screen alerts to, *inter alia*, remind viewers that their favorite program is being broadcast. Applicants submit that the Examiner's contention that Maissel's intelligent agents assigns points to audience actions is particularly unreasonable. Nowhere does Maissel show that the intelligent agent's "rule-based abstracted method" assigns points to audience actions. Instead, Maissel's intelligent agent merely alerts users of programs based on the information in their preference profiles. Further, anyone skilled in the art would take applicants' claimed "assigning a predetermined quantity of points" to logically mean awarding a set number of points in response to a particular action. Nowhere does Maissel show this action as part of its intelligent agent or preference profile. Finally, and most importantly, nothing in Maissel shows using user viewing habits or other similar information to calculate audience size information. For these reasons, applicants submit that independent claims 29, 108, and 187 are patentable over Maissel.

C. Independent Claims 51, 130, and 209

Applicants' independent claims 51, 130, and 209 are directed toward a method and systems for measuring audience size information for an upcoming program in an interactive application. Indications to perform actions related to the upcoming program are received from a plurality of audience members. Audience size information is updated in response to receiving

the indications. Audience size information is then provided to at least one user within the interactive television application.

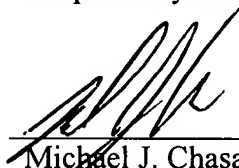
As described above with respect to independent claims 1, 80, and 159, Maissel only refers to providing audience size information based on programs available to the viewer in real time (i.e. "real-time information" on what proportion of an audience is watching currently broadcast programming). See Maissel, col. 19, lines 23-30. Maissel makes no reference to providing such information for an upcoming program. Therefore, Maissel does not show updating audience size information based on users viewing upcoming programs. For at least this reason, Maissel fails to show all of the features of applicants' independent claims 51, 130, and 209. Applicants respectfully request, therefore, that the rejection of these claims under 35 U.S.C. § 102(e) be withdrawn..

III. Conclusion

Claims 2-6, 8-11, 13-28, 30-46, 50, 52-56, 58, 60-79, 81-85, 87-90, 92-107, 109-125, 129, 131-135, 137, 139-158, 160-164, 166-169, 171-186, 188-204, 208, 210-214, 216, and 218-237 depend on independent claims 1, 29, 51, 80, 108, 130, 159, 187, and 209, and are allowable at least because claims 1, 29, 51, 80, 108, 130, 159, 187, and 209 are allowable.

For the foregoing reasons, applicants submit this application is in condition for allowance. Reconsideration and allowance are respectfully requested.

Respectfully submitted,



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